

IT IS ORDERED as set forth below:

Date: May 7, 2020



A handwritten signature in black ink, appearing to read "Lisa Ritchey Craig".

Lisa Ritchey Craig
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
CASSANDRA JOHNSON LANDRY,	:	18-55697-LRC
	:	
	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court is the *Motion to Quash Subpoenas to Produce Documents in a Bankruptcy Case* (the “Motion”) (Doc. 277), filed by Jojo John (“Movant”) and the *Objection to Squashing Motion* (the “Objection”) (Doc. 283), filed by Cassandra Johnson Landry (“Debtor”).

On April 3, 2018, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. Debtor moved to voluntarily convert her bankruptcy case to Chapter 7

on September 13, 2018. S. Gregory Hays (the “Trustee”) was appointed as the Chapter 7 Trustee. On February 15, 2019, the Trustee abandoned the bankruptcy estate’s interest in real property known as 869 Natchez Valley Trace, Grayson, GA 30017 (the “Property”), which terminated the automatic stay as to the bankruptcy estate’s interest in the Property. *See* Doc. 155; 11 U.S.C. § 362(c)(1), § 554. On June 4, 2019, the Court lifted the automatic stay to allow U.S. Bank, National Association (the “Bank”) to exercise its state law rights with regard to the Property. Doc. 179.

On April 22, 2020, Movant filed the Motion, seeking to quash two subpoenas, copies of which are attached to the Motion as Exhibits 13 and 14 (the “Subpoenas”), which Movant contends were tendered without any witness fee or mileage. One of the Subpoenas states the “place” as the Property and the other states the “place” as 669 Natchez Valley Trace, Grayson, GA 30017, but both Subpoenas state the time and date as “12 pm on 5/8/20.” One of the Subpoenas requests production of: “Any and all specific communication, records, emails, phone logs, files, and data of correspondence with creditors public service officials and representing agents involved in this action regarding Debtor Petition and homestead [sic] real property for 869 Natchez Valley Trace, Grayson, GA 30017” and the other requests this information with regard to “669 Natchez Valley Trace, Grayson, GA 30017.”

According to the Motion, Movant was the successful bidder at a foreclosure sale

conducted by the Bank on February 4, 2020, and purchased the Property for \$401,000. Following his purchase of the Property, Movant initiated a dispossessory proceeding in the Magistrate Court of Gwinnett County, Georgia (the “Dispossessory”), which Debtor removed into a case already pending in the District Court for the Northern District of Georgia (Case Number 19-CV-3401-ELR-WEJ) (the “District Court Case”). On March 9, 2020, the District Court dismissed the District Court Case with prejudice. Thereafter, the Magistrate Court of Gwinnett County reopened the Dispossessory on March 10, 2020. The case is currently stayed, however, due to the Covid-19 pandemic.

Movant asks the Court to quash the Subpoenas because they are unreasonable, improper, oppressive, and retaliatory. Specifically, Movant notes that he is not a party to any litigation involving Debtor in this Court and is not a creditor of Debtor and asserts that Debtor has issued the Subpoenas in order to delay the Dispossessory and to impose unnecessary burdens of time and expense on Movant. Further, the Subpoenas were served without a tender of witness fee or reasonable mileage, require Movant to be in two different places at one time, and request production of documents relating to things which mostly do not exist, particularly with reference to 669 Natchez Valley Trace, with which Movant has had no involvement. Movant also objects to the Subpoenas because they request documents that are not relevant to any matter pending in this Court and do not describe the documents to be produced with sufficient particularity to apprise Movant of the documents

Debtor seeks. For example, Movant is unable to decipher the meaning of “communications regarding Debtor Petition and homestead.”

In her Objection, Debtor does not dispute the aforementioned, pertinent facts. Rather, Debtor appears to take issue with the manner in which Movant’s attorney has conducted himself in connection with the District Court Case and the Dispossession, as well as the authenticity and correctness of the order dismissing the District Court Case and alleged conflicts of interest between the judge overseeing the Dispossession and Movant’s attorney or other parties. Those matters are appropriately addressed to the District Court and the state court, rather than this Court. Nothing in the Objection provides any basis for the Court to uphold the propriety of the Subpoenas.

Rather, the Court agrees that the Subpoenas were not issued properly. Rule 9016 of the Federal Rules of Bankruptcy Procedure provides that Federal Rule 45 applies in “cases under the Code.” Fed. R. Bankr. P. 9016. Federal Rule 45, in turn, permits a “party” to obtain a subpoena commanding the production of documents. Fed. R. Bankr. P. 9016; Fed. R. Civ. P. 45(a)(1)(C); 45(a)(3). “Therefore, under a plain reading of Federal Rule 45 and Rules 9002(1), 9016, and 2004, to obtain a subpoena for production of documents, a party in interest must either be a party to an adversary proceeding, contested petition, or contested matter, or, when there is no litigation pending, have obtained a Rule 2004 order.” *In re Patel*, 2017 WL 377943, at *2 (Bankr. N.D. Ga. Jan. 26, 2017). Here,

there is no ligation pending, and the Court has not entered a Rule 2004 examination order that would support the issuance of a subpoena on a nonparty.

For this reason, and for all other reasons noted above, the Subpoenas must be quashed.

IT IS ORDERED that the Motion is **GRANTED**, and the Subpoenas are hereby quashed.

END OF DOCUMENT

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